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their lines and tracks, and as to the location of their barns and repair shops, such companies are governed by the same principles as steam railroads, yet because of the ability to transmit power such great distances, it seems difficult to say that any particular land is necessary for the location of steam power-houses. That was the decision in a Rhode Island case, where a company operating three distinct lines of track sought to locate a central power station about equidistant from them all. There was nothing in the location of the land desired which made it necessary to any greater degree than much other land equally favorably situated, and the court held that under such circumstances the company should be required to purchase as any private individual.¹ The fact that there was abundant land available prevented any possibility of combination against the company, and since that is generally the case, it seems that the instances in which any particular land is necessary for such purposes must be extremely rare. The argument for any special location will usually amount to nothing more than the convenience of the company, or at the most its ability to serve the public more cheaply. Economy, however, because of the large number of elements entering into any computation of it, must always remain an extremely unsatisfactory ground upon which to base condemnation proceedings, even if principle would permit the taking of land without consent for such a reason. Certainly there is no more basis for allowing condemnation in these cases than for allowing a common expressman between two towns to condemn land for a stable. Although the land is desired for a public purpose, that particular land is not necessary.

In view of these considerations, the criticism of the Rhode Island decision contained in a recent New Hampshire case is unfortunate, particularly as the latter case had to decide only that the land was wanted for a public purpose. The fact that it was required to complete the right of way for the company's wires showed clearly that that particular land was necessary. *Rockingham, etc., Co. v. Hobbs*, 72 N. H. 531.

VALIDITY OF TRUSTS WHERE TRUSTEE IS DIRECTED TO CHOOSE THE CESTUI. — Future equitable estates, like future legal estates, may be subject to any limitations which do not violate the rule against perpetuities.¹ The *cestui que trust* may be changed by the happening of any prescribed contingency, for example, upon one's changing his name or ceasing to live in a certain house, upon the birth of a child,² or upon appointment by a person designated in the instrument.³ But in the very nature of things there can be no trust without a *cestui que trust*.⁴ Therefore, when an instrument showing that the holder of the legal title is not to take beneficially fails to indicate *cestuis que trust* for the entire equitable interest, equity raises a resulting trust for the grantor or his representatives, although it is expressly stated that the heirs shall not take.⁵ Likewise where property is devised on trust to build a monument, to take care of animals, or to pay for masses,

¹ *In re Rhode Island, etc., Co.*, 22 R. I. 457.

² Gray, *Perpetuities* § 66.

³ *Ibid.* § 61.

⁴ *Townshend v. Windham*, 2 Ves. 1, 9.

⁵ Y. B. 7 Ed. IV. 16, 17 b, *per* Brian, J. — In a feoffment to the use of the plain of Salisbury or the moon, the use is void. See 15 HARV. L. REV. 512.

⁶ *Fitch v. Weber*, 6 Hare 145.

the trust fails, for no *cestui que trust* is named and no contingency provided to determine one. It has been suggested that no constructive trust should be raised while the trustee is willing to use the property as the testator directed.⁶ Perhaps a sufficient answer is that equity, following the law, should allow no restrictions on the use of property except by contract or by conditions, and that unless justice requires the creation of a conditional estate without words of condition in the instrument, a resulting trust must arise for the heirs.⁷

The principle which allows a *cestui* to be changed on any contingency seems to have been overlooked in an early case where property was given on trust for beneficiaries to be selected by the trustee. The argument of counsel concerned itself mainly with the validity of the gift as a charitable trust, and, deciding that it was not, the court held it void for indefiniteness.⁸ This decision, recently approved by the New York Appellate Division, has been almost universally followed. *Mount v. Tuttle*, 99 N. Y. App. Div. 433. But such a trust is really no more indefinite than one for an unborn child,⁹ or for whomever the settlor may appoint.¹⁰ Until the child is born or the *cestui* appointed, the beneficial interest results to the grantor.¹¹ He is the definite *cestui que trust* till another definite *cestui* is determined by the happening of the contingency. The new *cestui* takes by force of the instrument of conveyance, and there seems no reason on principle why the contingency should not be allowed simply because it happens to be an appointment by the same person who holds the legal title as trustee.

It has been urged in support of the decision that the direction to appoint the beneficiary is mandatory and that "the law does not allow of irrevocable mandates."¹² But the cases cited in support of this proposition show only that a principal can always discharge his agent.¹³ This is because a conveyance through an agent is really a conveyance by the principal, and until consummated the principal can change his method at will. But the direction to choose a beneficiary is not like the command to an agent to make a conveyance; it is rather the means provided by the testator to determine for whose benefit the will shall operate. It is similar to the case where an executor is directed to sell the land; the vendee gets title by the will, and the heir cannot revoke the mandatory direction.¹⁴

THE DOCTRINE OF ORIGINAL PACKAGES. — State statutes prohibiting the sale of an article which is a legitimate subject of interstate commerce, or taxing it to discourage its sale, were early declared unconstitutional in so far as they tended to regulate interstate commerce.¹ It was recognized, however, that if carried to its full extent this constitutional protection must interfere unreasonably with the legitimate powers of the state. If strictly

⁶ See 5 HARV. L. REV. 389.

⁷ Cases are reviewed in 15 HARV. L. REV. 515. Some are on their facts supportable as charitable trusts, some as provisions for funeral expenses.

⁸ *Morice v. Bishop of Durham*, 10 Ves. Jun. 521.

⁹ *Hopkins v. Hopkins*, Cas. t. Talb. 43.

¹⁰ *Clere's Case*, 6 Co. 17 b.

¹¹ *Ibid.*

¹² See 15 HARV. L. REV. 512.

¹³ See cases cited in 15 HARV. L. REV. 513, n. 1.

¹⁴ Y. B. 9 Hen. VI. 24 b, *per* Bobington, J.

¹ *Brown v. State of Maryland*, 12 Wheat. (U. S.) 419 (1827).